

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

BRIAN MCALLISTER
APPELLANT,

CASE NO: 23A 1346

V.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an agricultural parcel in Lancaster County, parcel number 22-11-100-006-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$237,900 for tax year 2023.
3. Brian McAllister (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$237,900 for tax year 2023.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 27, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie Russell.
7. Brian McAllister was present at the hearing for the Taxpayer.
8. Tim Sealock (Appraiser) was present for the County Board.

II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
11. When considering an appeal, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
12. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is an unimproved piece of agricultural land totaling 58.16 acres, made up of 52.72 dryland acres and 5.44 wasteland acres.
17. The Taxpayer stated that because his wasteland does not produce a commercial crop, it should not have value associated with it and questioned the method used by the County to value such land when neighboring counties have lower wasteland rates as shown on the Lancaster County 2021 Average Acre Value Comparison document provided by the Taxpayer.
18. The Taxpayer did not provide evidence for the 2023 Average Acre Value Comparison to Lancaster County wasteland values.
19. The Taxpayer stated that when investigating the wasteland value with the County, the County could not produce land sale records from neighboring counties that were used in the wasteland value production and suggested such records be found at the Commission's office. The Taxpayer attested that this constitutes a failure of the Lancaster County Assessor's office to follow Nebraska Administrative Code Title 350 Chapter 11-005.04.
20. The Appraiser stated that wasteland values are set using an abstraction methodology in conjunction with analysis of Wetland Reserve Program (WRP) sales, and non-influenced agricultural

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

sales from neighboring counties to include Butler, Gage, Johnson, Jefferson, Otoe, Pawnee, Richardson, and Saline counties. A list of neighboring county sales would have been provided by the Nebraska Department of Revenue Property Assessment Division (PAD) liaison for Lancaster County to analyze for the current valuation year and attested that agricultural land valuations have not changed since approximately 2020 due to lack of substantial data to support a change. The Appraiser reached out to their state liaison who could not produce a replica of the sales in question by the Taxpayer. Both the Appraiser and the PAD liaison for the county are new to the county agriculture valuation process for 2023.

21. The PAD houses individual sale transaction records in the State Sales File program and inquiries could be directed by any interested party to their office.
22. Nebraska Administrative Code Title 350 Chapter 11-005.04 plainly indicates what records shall be maintained by the assessor for any interested party to inspect which does include any other information necessary in supporting the estimate of valuation (005.04H).
23. Although there is a lack of transparency in the sales data used to set the wasteland valuation, the Taxpayer did not produce clear and convincing evidence to quantify a different valuation for wasteland or a different methodology.
24. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2023 is affirmed
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$237,900
<u>Improvements</u>	<u>\$ 0</u>
Total	\$237,900

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2023.
7. This Decision and Order is effective on May 22, 2024.

Signed and Sealed: May 22, 2024



Jackie S. Russell, Commissioner